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EXAMINER

WATTS, D

ART UNIT

PAPER NUMBER

3724

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 13

Application Number: 09/228,109

Filing Date: 01/11/99

Appellant(s): Martin Brady

Roger S. Dybvig

For Appellant

EXAMINER'S ANSWER

Art Unit: 3724

This is in response to appellant's brief on appeal filed October 10, 2000.

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

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The rejection of claims 10-13 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

The following is a listing of the prior art of record relied upon in the rejection of claims under appeal.

2,027,785	RAUH	1-1936
3,730,391	O'BANNON	5-1973
4,984,368	HOOVER ET AL.	1-1991

Manual for Presto can opener published by National Presto Ind. Inc. 1989.

(11) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claim 10 stands rejected under 35 U.S.C. 102(b) as being anticipated by the Presto manual (ref AU).

The reference shows a can opener with a housing having a flat upper surface. Applicant claims, in claim 10, that the housing releasably holds scissors. Webster's Ninth New Collegiate Dictionary Copyright 1990 by Miriam-Webster Inc. gives an accepted meaning of hold as "to support or keep from falling or moving", page 575. The flat upper

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surface of the Presto can opener would thus inherently function to hold scissors. This would appear to be an obvious use of the opener since scissors are often kept in kitchens in a accessible location that is out of the way of other operations being performed.

Claim 10 stands rejected under 35 U.S.C. 102(b) as being anticipated by O'Bannon.

O'Bannon shows the claimed can opener with a housing. The same rational as to the function of holding scissors is applied here as in the previous rejection under section 102(b). That is that the housing, specifically the area horizontal portion, would inherently function to hold a pair of scissors.

Claims 10-13 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the Presto manual (ref. AU) in view of Hoover et al. and Rauh.

The Presto can opener shows a combination device that includes a bag opener and can opener. Combinations of cutters and jar openers, ie. scissors and bottle openers, are old as shown by Rauh. The advantage of this combination device over the Presto device is that it can cut more than bags. The problem is how to attach it to a can opener. The answer is supplied by Hoover et al. who shows a sheath style nonuse support. The sheath would obviously hold the scissors to any suitable support. Thus it would have been obvious to one of ordinary skill in the art at the time the invention was made to equip the Presto can opener with a sheath as shown by Hoover to hold the scissor/opener of Rauh. Obviously then the slitter and jar opener of the presto can opener would be unnecessary. The motivation would be obviously to produce a more versatile device.

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Appellant argues on page 5 of the brief that the art is devoid of any showing or suggestion to place scissors on either of the openers. It is felt that such a use is an inherent function of those devices. That is to say that it would be an obvious use thereof. Most kitchens have knives and scissors for various cutting purposes. They are normally kept in an accessible place that is out of the way of other operations. The can opener top would be such a place. Further the Presto opener also has a bag opener which gives the device an opening function. What would be more logical than placing scissors there to add versatility to the device? Thus the function would appear to be an inherent one.

The argument concerning O'Bannon follows the preceding rational. An accessible out of the way place for a small kitchen item such as scissors would be the rear ledge of O'Bannon. It is thus an inherent function of the device.

Appellant argues on page 6 of the brief that the combination of references under section 103 is improper. He states that Rauh's shears add nothing useful to the Presto device. This ^{is} faulty logic since adding the shears to Rauh would increase the versatility of the device. It would now have an all purpose cutter rather than just a bag opener. It would also enable the body of the device to be less complicated since the bag opener and jar opener would be deleted. Further if and when the opener failed the scissors would still be a useful tool for the kitchen. Thus extending the life of at least part of the device. Appellant then states that the sheath of Hoover that makes scissors easy to get to would add nothing to the combination. It is

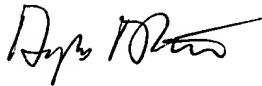
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fell that adding convince to the device would be useful. It thus appears that there is motivation to combine the references.

The board of Appeals in they requested to uphold the rejection.



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